

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND**

**RECEIVED**  
DEC 14 2001

IN RE:           The Newport Creamery, Inc.,  
                  Debtor

Case No. 01-13196  
Chapter 7

**ORDER AUTHORIZING TRUSTEE TO SELL  
CERTAIN ASSETS FREE AND CLEAR OF LIENS  
PURSUANT TO 11 U.S.C. § 363**

This matter came to be heard on the 6<sup>th</sup> day of December, 2001, upon the Notice of Intended Sale filed by the Trustee, Andrew S. Richardson, and the Objections of certain parties in interest to said Notice of Intended Sale. Upon consideration thereof, and after hearing thereon, it is hereby

**ORDERED, ADJUDGED AND DECREED:**

1.       That the Limited Objection of Jan Co., Inc. ("Jan Co."), is hereby granted to the extent the Letter Agreement dated November 15, 2001, by and between Bank Rhode Island ("Bank RI") and Creamery Acquisition, LLC, is hereby disapproved;
2.       That the Court specifically grants the requested relief of Jan Co., the Trustee and Bank RI to allow the sale to proceed through auction in accordance with the Trustee's Notice of Intended Sale and 11 U.S.C. § 363;
3.       That all other Objections to the Notice of Intended Sale are denied;
4.       That good and sufficient notice of the intended sale, and sale as conducted, was given to all necessary parties in interest, creditors and security holders accordance with 11 U.S.C. § 363 and Bankruptcy Rule 6004;
5.       That the Trustee was specifically authorized to hold an auction of certain assets of the Debtor set forth in the Notice of Intended Sale and in accordance with the terms of

the Notice of Intended Sale, and Bank RI consented thereto in accordance with 11 U.S.C. § 363(f)(2);

6. That after an extensive auction conducted by the Trustee, Jan Co. was the successful bidder at said auction sale;

7. That the Trustee is hereby authorized to convey to Jan Co., or its nominee, free and clear of all liens, including but not limited to the liens on Bank RI, for a purchase price in the amount of One Million Five Hundred Fifty Thousand Dollars (\$1,550,000), all of the Debtor's rights, title and interest in and to the following assets:

(a) All of the Debtor's trademarks, service marks and good will, whether such marks are registered or existing at common law, including but not limited to all of the Debtor's trademarks and good will currently subject to the security interest of Bank Rhode Island ("Bank RI"), and including but not limited to all of those trademarks and trade names set forth on Exhibit A hereto;

(b) All of the Debtor's intangible personal property, all books and records, recipes, trade secrets, formulas, rights to occupancy, tenancies and all tangible personal property and inventory including equipment and all motor vehicles (including the ice cream truck and the refrigerator truck including, without limitation, the motor vehicles identified on Exhibit B attached hereto and made a part hereof), except for the equipment presently located in Massachusetts or Connecticut, equipment subject to security interests in favor of GE Capital Franchise Finance Corporation ("FFCA"), cash, claims of the Trustee and the Debtor's bankruptcy case, including, without limitation, the so-called "bankruptcy causes of action" under 11 U.S.C. §544 through 550, and any equipment that the Jan Co. determines it does not wish to purchase; and

(c) All of the Debtor's inventory located at the Middletown, Rhode Island operation of the Debtor;

8. That the Trustee is authorized to conduct a closing (the "Closing") on the sale of the above assets on or before December 20, 2001, or at such other time as the Trustee and Jan Co. shall mutually agree;

9. That Trustee is authorized to assume and assign to Jan Co., the Debtor's lease of the premises located at Garden City Center, Cranston, Rhode Island, upon the payment by Jan Co. at Closing of the cost to cure the defaults under said lease in the amount of \$67,006.72, and the Trustee is authorized and directed to promptly pay after Closing those cure costs to the landlord, Gateway Woodside, Inc.;

10. That the hearing on the Motion of the Trustee to Assume the lease with respect to the premises located at Garden City Center, Cranston, Rhode Island, presently scheduled for January 3, 2002, at 9:30 a.m., is unnecessary and is hereby cancelled;

11. That in consideration of the split of the sales proceeds between Bank RI and the Trustee, the Trustee is found to have waived any and all rights that the Trustee, the bankruptcy estate or any person claiming by or through the bankruptcy estate, may have against Bank RI or any of its collateral under 11 U.S.C. § 506(c), and the Trustee is authorized and directed to promptly pay after Closing the sum of Nine Hundred Eighty Three Thousand Three Hundred Thirty-Four (\$983,334), the agreed amount of said split to Bank RI;

12. That based upon the offer of proof given by counsel to Jan Co., it is specifically found that Jan Co. is a good faith purchaser entitled to protection of 11 U.S.C. § 363(m) and none of the provisions of 11 U.S.C. § 363(n) have been violated;

13. That the oral motion of the Trustee for waiver of the ten (10) day stay pending appeal pursuant to Bankruptcy Rule 6003(g) is hereby granted over the objection of the Debtor, Newport Creamery, LP, NewHart, LP, Newburg LP, Rocomi Enterprises, LLC, Tarpon Highlands Development Corporation, LLC and Robert E. Swain, and their oral motion for stay pending appeal is hereby denied;

14. That the Trustee be, and he hereby is, authorized and directed to execute such bills of sale, assignments and other documents necessary and appropriate to complete the sale and the relief granted hereby and is authorized and empowered to take such other action and to issue, execute and deliver such other documents and instruments as may be necessary to carry out the transactions, authorizations and deliveries described or contained in this Order.

ENTERED as an Order of this Court on this 19th day of December, 2001.

ORDERED:

  
\_\_\_\_\_  
Arthur N. Vololato  
United States Bankruptcy Court Judge

Presented By:

  
\_\_\_\_\_  
PARTRIDGE SNOW & HAHN LLP

Brian J. Spero (#2301)  
180 South Main Street  
Providence, RI 02903  
(401)861-8200/FAX(401)861-8210

**Entered on docket**

**Date:** 12/19/01

## **EXHIBIT A**

### **Trademarks:**

Newport Creamery Ice Cream Express  
Newport Creamery  
At the Sign Of The Golden Cow  
Mega Melt  
Mega Melts  
Superburger  
Big Beef  
Cowlick Cone  
Awful Awful  
Jr. Awful Awful  
Super Chipper  
Big Deal Kids' Meal  
Awful Awful Shoppe  
Bergson

### **Tradenames:**

The Newport Creamery, Inc.  
Newport Creamery  
Bergson

NEWPORT CREAMERY  
VEHICLE SCHEDULE  
22-Oct-01

Exhibit B

OWNED VEHICLES	MAKE/MODEL	VIN #	MISC	DRIVER
97 MERC SABLE	97 MERC SABLE	1NELM5X8V6G657675	TITLE IN HR OFFICE	OFFICE
97 SABLE WAGON	97 SABLE WAGON	1NELM5S8V6A662465	TITLE IN HR OFFICE	OFFICE
97 MERC SABLE	97 MERC SABLE	1NELM5U8V6G646338	TITLE IN HR OFFICE	OFFICE
95 COUGAR	95 COUGAR	1MEDM6247SH621997	TITLE IN HR OFFICE	STEVE GRENNAN
98 CHEVY S-10	98 CHEVY S-10	2GCCS144QWB216435	TITLE IN HR OFFICE	OFFICE
98 GMC VAN	98 GMC VAN	1GKGG2R3W1036785	TITLE IN HR OFFICE	HENRY WHITE
95 CHEVROLET VAN	95 CHEVROLET VAN	1GBHG31Y65F231585	TITLE IN HR OFFICE	MAINT - CHRIS
94 FORD REFRIGERATION	94 FORD REFRIGERATION	1FDXR82ZXRVA9407	TITLE IN HR OFFICE	PLANT
93 FRESH TUNER REFRIG	93 FRESH TUNER REFRIG	1FV6HLA8PL420502	TITLE IN HR OFFICE	PLANT
98 FORD REFRIGERATION	98 FORD REFRIGERATION	1FDYR82A5KVAA8160	TITLE IN HR OFFICE	PLANT
94 CHEV P30	94 CHEV P30	1GBGP32Z5NS303851	TITLE IN HR OFFICE	ICECREAM

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing ORDER AUTHORIZING TRUSTEE TO SELL CERTAIN ASSETS FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. § 363 was mailed, postage prepaid, on this 14<sup>th</sup> day of December, 2001 to:

Stephen DeLeo, Esq.  
PO Box 27  
Bristol, RI 02809

William J. Delaney, Esq.  
Tillinghast Licht Perkins Smith &  
Cohen  
Ten Weybosset Street  
Providence, RI 02903

Joseph M. DiOrio, Esq.  
Holland & Knight LLP  
One Financial Plaza  
Providence, RI 02903

Peter J. Furness, Esq.  
Nixon Peabody LLP  
One Citizens Plaza  
Providence, RI 02903

Christine D. Lynch, Esq.  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110-3333

Genevieve M. Martin, Esq.  
Assistant Attorney General  
RI Dept. of Attorney General  
150 South Main Street  
Providence, RI 02903

John P. McCoy, Esq.  
Carroll Kelly & Murphey  
One Turks Head Plaza  
Suite 400  
Providence, RI 02903

Steven M. McInnis, Esq.  
38 Bellevue Avenue  
Newport, RI 02840

Keven A. McKenna, Esq.  
McKenna Law Offices  
23 Acorn Street  
Providence, RI 02903

Richard S. Mittleman, Esq.  
Cameron & Mittleman  
56 Exchange Terrace  
Providence, RI 02903

Harold B. Murphy, Esq.  
Hanify & King  
One Federal Street  
Boston, MA 02110

Andrew S. Richardson, Esq.  
Boyajian Harrington & Richardson  
182 Waterman Street  
Providence, RI 02906

Stephen A. Rodio, Esq.  
Rodio & Brown  
91 Friendship Street  
Providence, RI 02903

Allan M. Shinc, Esq.  
Winograd Shine & Zacks  
123 Dyer Street  
Providence, RI 02903

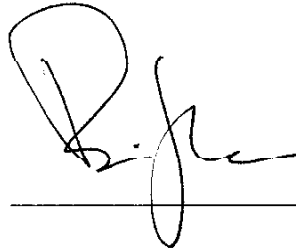
In Re: The Newport Creamery, Inc.

Case No. 01-13196-ANV, Chapter 7

Alfred G. Thibodeau, Esq.  
55 Pine Street  
Providence, RI 02903

Marc D. Wallick, Esq.  
Wallick & Paolino  
51 Jefferson Boulevard  
Warwick, RI 02888

Joseph A. Keough, Jr., Esq.  
Keough & Swcency, Ltd.  
100 Armistice Boulevard  
Pawtucket, RI 02860



---



Debtor Newport Creamery Inc., The, 208 West Main Street, Middletown, RI 02842  
Aty Bertozzi, Edward J., Jr. Edwards & Angell, 2800 Financial Plaza, Providence, RI 02903  
Aty Massari, Dominic L., III Massari Law Group, 601 S. Fremont Avenue, Tampa, FL 33606  
Trustee Richardson, Andrew S. 182 Waterman Street, Providence, RI 02906  
Aty Richardson, Andrew S. Boyajian Harrington & Richardson, 182 Waterman Street, Providence, RI 02906  
Aty Avanzato, Joseph Adler Pollock & Sheehan, 2300 BankBoston Plaza, Providence, RI 02903  
Aty Baldiga, Joseph H.  
Mirick O'Connell DeMallie & Lougee, 1700 BankBoston Tower, 100 Front Street, Worcester, MA 01608-1477  
Aty Block, Mark E. O'Brien Shafner Stuart, Kelly & Morris, P.C., PO Box 310, Norwich, CT 06360  
Aty Boggs, David M. MacFarlane Ferguson & McMullen, PO Box 1669, Clearwater, FL 33757  
Aty Bogosian, Paul J., Jr. Moore & Bogosian, 32 Custom House Street, Providence, RI 02903  
Aty Carey, Paul W.  
Mirick O'Connell DeMallie & Lougee, 1700 BankBoston Tower, 100 Front Street, Worcester, MA 01608-1477  
Aty Carlotto, Thomas E. Shechtman Halperin & Savage, 86 Weybosset Street, Providence, RI 02903  
Aty Carroll, Joseph P. Plaza Center - Suite 203, 68 Cumberland Street, Woonsocket, RI 02895  
Aty Cohen, Barbara S. Goldenberg & Muri, 10 Weybosset Street, Providence, RI 02903  
Aty D'Avolio, Gerald Jr.  
Assistant Attorney General, Insurance Division, 200 Portland Street 4th Floor, Boston, MA 02114  
Aty DeLeo, Stephen PO Box 27, Bristol, RI 02809-0027  
Aty Delaney, William J. Tillinghaast Licht Perkins Smith & Cohen, Ten Weybosset Street, Providence, RI 02903  
Aty DiOrio, Joseph M. Holland & Knight LLP, One Financial Plaza, Providence, RI 02903  
Aty Dolbashian, Kenneth R. c/o Chappell & Chappell, 171 Chase Road, Portsmouth, RI 02871-0008  
Aty Epstein, Richard W. Greenspoon Marder Hirschfeld et al., Trade Centre South Suite 700,  
100 West Cypress Creek Road, Fort Lauderdale, FL 33309  
Aty Ethridge, Deena C. Mintz Levin Cohn Ferris, Glovsky & Popeo, One Financial Center, Boston, MA 02111  
Creditor Ford Motor Credit Company, Department A, Greenville, SC 29606  
Aty Laing, Lynda L. Strauss Factor & Lopes, 403 South Main Street, Providence, RI 02903  
Aty Foyle, Larry M. 1505 N. Florida Avenue, P.O. Box 800, Tampa, FL 33601  
Aty Freedman, Gary M.  
Tabas Freedman & Soloff PA, 919 Ingraham Building, 25 Southeast Second Avenue, Miami, FL 33311-1538  
Aty Furness, Peter J. Nixon Peabody LLP, One Citizens Plaza, Providence, RI 02903  
Aty Geremia, Lisa A. Geremia & DeMarco, 99 Wayland Avenue, Providence, RI 02906  
other pro Goldberg, Leland B. Resolution Capital Corporation, 200 Highland Avenue, 3rd Fl, Needham, MA 02494  
Aty Gould, Sherrill R. Gould Law Associates, 311 Great Road, PO Box 752, Littleton, MA 01460  
Aty Graham, Kevin H. Shumaker, Loop & Kendrick, LLP, PO Box 172609, Tampa, FL 33672-0609  
Aty Greenberg, Daniel B. Wilson, Orcutt, Cutter & Greenberg, P.C., 201 Great Road, Acton, MA 01720  
Aty Hayhow, Van L. 923 Washington Street, South Attleboro, MA 02703  
Aty Hwayeck, Gary P. 10 Purchase Street 5th Floor, Fall River, MA 02720  
Aty Keough, Joseph A., Jr. Keough & Sweeney, 100 Armistice Boulevard, Pawtucket, RI 02860  
Aty Koelemay, James M. General Counsel, Coca-Cola Fountain, PO Box 105037, Atlanta, GA 30348-5037  
Aty Kurtzman, Jeffrey  
Klehr Harrison Harvey, Branzburg & Ellers LLP, 260 South Broad Street, Philadelphia, PA 19102  
Aty Lally, Donald J., Jr. VanCougghen & Lally, 19 Oak Street, Wakefield, RI 02879  
Aty Lemos, Bernard J. State of RI - Taxation, One Capitol Hill, Providence, RI 02908  
Aty Levanti, John 16 High Street, PO Box 304, Westerly, RI 02891  
Aty Lovell, Charles A. Partridge Snow & Hahn, 180 South Main Street, Providence, RI 02903  
accountant Lowey, Keith D. Verdolino & Lowey, P.C., 124 Washington Street, Foxborough, MA 02035  
Aty Lynch, Christine D. Goulston & Storrs, 400 Atlantic Avenue, Boston, MA 02110-3333  
Aty Martin, Warren J., Jr.  
Riker Danzig Scherer Hyland & Perretti, One Speedwell Avenue, PO Box 1981, Morristown, NJ 07962-1981

Aty Martin, Genevieve M.  
Assistant Attorney General, RI Dept. of Attorney General, 150 South Main Street, Providence, RI 00000

Aty Masters, Robert Acadia Realty Trust, 20 Soundview Marketplace, Port Washington, NY 11050

Aty McCoy, John P. Carroll Kelly & Murphey, One Turks Head Plaza Suite 400, Providence, RI 02903

Aty McInnis, Steven M. 38 Bellevue Avenue, Newport, RI 02840

Aty McKenna, Keven A. McKenna Law Offices, 23 Acorn Street, Providence, RI 02903

Aty Mittleman, Richard S. Cameron & Mittleman, 56 Exchange Terrace, Providence, RI 02903

Aty Murphy, Harold B. Hanify & King, One Federal Street, Boston, MA 02110

Aty O'Brien, William J., Jr. William J. O'Brien Incorporated, 74 Evergreen Court, South Kingstown, RI 02879

Aty Pilver, Joan E. Assistant Attorney General, 5th Floor, 55 Elms Street, Hartford, CT 06106

Aty Regan, Peter Brent Sayer Meyer & Regan, 130 Bellevue Avenue, Newport, RI 02840

Aty Rodio, Stephen A. Rodio & Brown, 91 Friendship Street, Providence, RI 02903

Aty Rosner, Douglas B. Goulston & Storrs, 400 Atlantic Avenue, Boston, MA 02110-3333

Aty Russo, W. Mark Ferrucci Russo PC, 49 Weybosset Street, Providence, RI 02903

Appraiser Scotti, Peter 246 Hope Street, Providence, RI 02906-2217

Aty Sgambettera, Matthew J. DAILY Dautel & Mooney LLP, 8 Thurlow Terrace, Albany, NY 12203-1006

Aty Shaiken, David M.S. David M.S. Shaiken PC, 330 Main Street, Hartford, CT 06106

Aty Shine, Allan M. Winograd Shine & Zacks, 123 Dyer Street, Providence, RI 02903

Aty Sholes, Andrew G. Sholes & Sholes, 1375 Warwick Ave., Warwick, RI 02888

Aty Silverman, Philip C. Stanton & Davis, 1000 Plain Street, Marshfield, MA 02050

Aty Spear, Scott T. Blish & Cavanagh, 30 Exchange Terrace, Providence, RI 02903

Aty Spero, Brian J. Partridge Snow & Hahn, 180 South Main Street, Providence, RI 02903

Aty Sullivan, Patrick J. Sullivan & Sullivan, Coventry Commons, 475 Tiegue Avenue Suite 3, Coventry, RI 02816

Aty Sylvia, Mark G. Salter McGowan Sylvia & Leonard, 321 South Main Street, Providence, RI 02903

Aty Thibodeau, Alfred G. 55 Pine Street, Providence, RI 02903

Creditor US Dept. of Labor,  
Attn: Robert Lang, Pension and Welfare Benefits Admin., J.F. Kennedy Fed. Bldg. Rm 575, Boston, MA 02203

Aty Splagounias, Gregory A.  
US Department of Labor, Office of the Solicitor, One Congress St 11th Floor, Boston, MA 02114  
US Trustee, Room 915, 10 Dorrance Street, Providence, RI 02903

Creditor Waldman, Robert N. 56 Aquarius Drive, Warwick, RI 02889

Aty Wallick, Marc D. Wallick & Paolino, 51 Jefferson Boulevard, Warwick, RI 02888

Creditor Wynding Hill Limited Partnership, 528 Pequot Avenue, New London, CT 05320

Aty Pisaturo, Charles A., Jr.  
Law Offices of Charles A. Pisaturo Jr., Old Colony House, 58 Weybosset Street Suite 400, Providence, RI 02903